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**IN THE
COURT OF APPEALS OF INDIANA**

BENJAMIN WADE COCHRAN,

Appellant-Defendant,

VS.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 15A01-0611-CR-513

APPEAL FROM THE DEARBORN SUPERIOR COURT
The Honorable G. Michael Witte, Judge
The Honorable John D. Mitchell, Special Judge
Cause No. 15D01-0512-CM-1563

August 30, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Benjamin Wade Cochran (“Cochran”) appeals his conviction under Indiana Code § 9-24-18-1 for operating a motor vehicle having never received a license. Specifically, Cochran argues that the statute is unconstitutional as applied to him because it violates his free exercise of religion, that the State failed to prove venue, and that the trial court erred by denying his requests to depose various State officials at public expense. Because Cochran’s religious belief that social security numbers, which are allegedly required to obtain a driver’s license, are “the mark of the devil” is not a defense to the crime of operating a motor vehicle having never received a license, his constitutional challenge fails. In addition, Cochran waived for our review the issue of venue by failing to object to venue either prior to or during trial. Finally, because Cochran failed to prove that the information sought from the depositions is material to his defense, the trial court did not abuse its discretion in denying his requests. We therefore affirm the trial court.

Facts and Procedural History

On October 19, 2005, Officer John Hegge (“Officer Hegge”) of the Dillsboro Police Department observed Cochran cross the right-side fog line on State Route 50 in Dearborn County several times, so he initiated a traffic stop. When Officer Hegge asked Cochran for his driver’s license and registration, Cochran produced his registration only. Cochran explained to the officer that he did not have a driver’s license, which allegedly requires a social security number, because he believes social security numbers are “the mark of the devil.” Trial Tr. p. 6. Cochran, who gave Officer Hegge a three-page

document on the topic, asked the officer to “observe his religious convictions.” *Id.* at 7. Cochran also told Officer Hegge that he had never received a driver’s license.

On December 6, 2005, the State filed an information charging Cochran with operating a motor vehicle having never received a license, a Class C misdemeanor,¹ in Dearborn County, and the case was assigned to Judge G. Michael Witte (“Judge Witte”). At a March 15, 2006, pretrial conference, Cochran advised Judge Witte that he wished to represent himself. Then, at an April 6, 2006, indigency hearing, Cochran requested and received stand-by counsel. Thereafter, Cochran filed two motions requesting that a court reporter be appointed at public expense for the purpose of conducting depositions of various state officials, and Judge Witte denied both motions.

On May 17, 2006, Judge Witte disqualified himself, and thereafter, Judge John D. Mitchell (“Special Judge Mitchell”) from Ohio County was appointed as Special Judge. Cochran then filed two additional motions requesting that a court reporter be appointed at public expense for the purpose of conducting the depositions, and Special Judge Mitchell denied both of these motions as well.

On August 24, 2006, a bench trial was held before Special Judge Mitchell. Cochran represented himself at trial, testifying that he believed that social security numbers are “the mark of the beast under [his] religious beliefs.” *Id.* at 16. Cochran explained that his religion is “Christianity” and that he has the “legal right guaranteed from the constitution under the right of life, liberty and the pursuit of happiness” to “travel upon the roads.” *Id.* at 15. When Cochran attempted to present evidence that a

¹ Ind. Code § 9-24-18-1(a).

social security number is required to obtain a driver's license in Indiana, the State objected on grounds that it "has nothing to do with why we're here today," *id.* at 12, and Special Judge Mitchell sustained the State's objection. At the conclusion of the trial, Special Judge Mitchell found Cochran guilty as charged and sentenced him to sixty days, all suspended, and one year of probation. Cochran then filed a motion to correct error, which Special Judge Mitchell denied following a hearing. Cochran, by counsel, now appeals.

Discussion and Decision

Cochran raises three issues on appeal. First, he contends that Indiana Code § 9-24-18-1 is unconstitutional as applied to him. Second, he contends that the State failed to prove venue. Third, he contends that the trial court erred in denying his requests to depose various State officials at public expense.

I. Constitutionality of Indiana Code § 9-24-18-1

Cochran contends that Indiana Code § 9-24-18-1 is unconstitutional as applied to him because it violates his free exercise of religion. Indiana Code § 9-24-18-1(a) provides:

A person, except a person exempted under IC 9-24-1-7, who:

- (1) operates a motor vehicle upon a highway; and
- (2) has never received a valid driving license;

commits a Class C misdemeanor.

This Court discussed the constitutionality of Indiana Code § 9-24-18-1 in *Cosby v. State*, 738 N.E.2d 709 (Ind. Ct. App. 2000). There, the defendant, who did not have a driver's license, was pulled over on his way to church. He was eventually convicted of operating

a motor vehicle having never received a license. On appeal, the defendant argued that the requirement that he possess a driver's license violated his "God-given right to travel, or his God-given right to worship." *Id.* at 711 (record citation omitted). We observed:

"A law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice." *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531, 113 S. Ct. 2217, 2226, 124 L.Ed.2d 472 (1993). The right of free exercise of religion does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his religion prescribes (or proscribes). *Employment Div., Dept. of Human Resources of Oregon v. Smith*, 494 U.S. 872, 879, 110 S. Ct. 1595, 1600, 108 L.Ed.2d 876 (1990). If the object of a law is to infringe upon or restrict practices because of their religious motivation, the law is not neutral. *Church of the Lukumi Babalu Aye, Inc.*, 508 U.S. at 533, 113 S. Ct. at 2227. "The defect of lack of general applicability applies primarily to those laws which, though neutral in their terms, through their design, construction, or enforcement target the practices of a particular religion for discriminatory treatment." *Id.* at 557, 113 S. Ct. at 2239 (Scalia, J., concurring).

Id. at 711-12.

Applying these principles, we concluded that the law requiring those who wish to drive motor vehicles on public highways to obtain licenses is a neutral law of general applicability and that there was no indication that the law was enacted with the object of restraining persons from traveling to their chosen place of worship. *Id.* at 712. We observed that the statutory scheme governing the use of motor vehicles conditions the use of a driver's license on the observation of certain rules and operating standards for general reasons of public safety. *Id.* In essence, if a person "wishes to be able to use roads constructed and maintained by the government to expedite travel," he must comply with the requirements to assure "the safety of himself, his passengers, and other members

of the public who use those roads by obtaining a driver's license." *Id.* We therefore held that the defendant's right to the free exercise of religion had not been infringed upon. *Id.*

Here, Cochran makes no argument that Indiana Code § 9-24-18-1 is not a neutral law of general applicability or that through the enforcement of Indiana Code § 9-24-18-1, Indiana is targeting the practices of a particular religion for discriminatory treatment. Instead, Cochran alleges, "By requiring [him] to provide a social security number, the State is forcing him to choose between his religious beliefs and the privilege of driving a car." Appellant's Br. p. 6 (footnote omitted). In essence, what Cochran is really challenging is the Indiana Bureau of Motor Vehicles' ("BMV") alleged requirement that a person must have a social security number in order to obtain a driver's license.² But this is not the proper forum to make such a challenge.

In support of his argument, Cochran cites *Terpstra v. State*, 529 N.E.2d 839 (Ind. Ct. App. 1988), *reh'g denied*. Although we find *Terpstra* to be applicable, we find it to support the State's position. In *Terpstra*, the defendant was convicted of, among other things, failure to have a driver's license in his possession. The facts showed that although the defendant formerly possessed a driver's license, he later relinquished it because of his religious objections to social security numbers.³ On appeal, this Court squarely held that the defendant's "religious beliefs do not constitute a legal defense to

² Cochran clarifies in his reply brief, "Mr. Cochran does not claim that the requirement of a driver's license violates his religious beliefs. Rather, he claims that the requirement that he have a social security number in order to obtain the driver's license violates his religious beliefs." Appellant's Reply Br. p. 2.

³ Cochran places great emphasis on the distinction between *Terpstra* and this case in that in *Terpstra*, the defendant formerly possessed a driver's license then later relinquished it, but in this case, Cochran tried to get a driver's license but was denied one. We find that this factual distinction between the two cases makes no legal difference.

his charges.” *Id.* at 846. We explained, “Our state legislature has a duty to enact legislation providing for the general welfare and safety of the people of this state. . . . The statute concerning driver’s licenses ensures a driver’s ability to maneuver a motor vehicle on public roads in Indiana, thus promoting public safety.” *Id.* We observed that the collective benefit to the general public outweighed any infringement on the defendant’s free exercise rights; therefore, if the defendant desires to drive a motor vehicle on public roads in Indiana, he must comply with applicable Indiana law. *Id.* at 847.

Likewise here, Cochran’s religious belief that social security numbers are “the mark of the devil” is simply not a defense to the crime of operating a motor vehicle having never received a license. *See id.* at 846. If Cochran desires to drive a motor vehicle on public roads in Indiana, he must comply with Indiana law requiring a driver’s license. Cochran’s religious objections to the specific driver’s license requirements are simply not at issue in this criminal case for operating a motor vehicle having never received a license. Cochran’s constitutional challenge thus fails.

II. Venue

Cochran next contends that the State failed to prove venue because the trial was held in Ohio County with Special Judge Mitchell though the evidence presented at trial showed that the offense occurred in Dearborn County. The right to be tried in the county in which an offense was committed is both a constitutional and a statutory right. *Baugh v. State*, 801 N.E.2d 629, 631 (Ind. 2004) (citing Ind. Const. art. I, § 13; Ind. Code § 35-32-2-1(a)). Venue is not an element of the offense. *Id.* Accordingly, although the State

is required to prove venue, it may be established by a preponderance of the evidence and need not be proven beyond a reasonable doubt. *Id.*

However, a defendant waives any alleged error relating to venue when he fails to make an objection before the trial court, either prior to or during trial. *Smith v. State*, 809 N.E.2d 938, 942 (Ind. Ct. App. 2004) (citing *Floyd v. State*, 503 N.E.2d 390, 393 (Ind. 1987), *reh'g denied*; *Critchlow v. State*, 264 Ind. 458, 346 N.E.2d 591, 597 (1976)), *trans. denied*. Here, Cochran did not make any objection to venue either prior to or during trial. Although he raised the issue of venue in his motion to correct error, this occurred too late. *See Spoonmore v. State*, 411 N.E.2d 146, 147 (Ind. Ct. App. 1980). Accordingly, Cochran has waived this issue for our review.

III. Discovery

Last, Cochran contends that the trial court erred in denying his requests to depose various State officials involved in the denial of his application for a driver's license at public expense. The record shows that Cochran filed two such motions before Judge Witte and two such motions before Special Judge Mitchell.

Decisions regarding discovery matters are within the broad discretion of the trial court as part of its inherent power to guide and control the proceedings. *Thompson v. State*, 702 N.E.2d 1129, 1130 (Ind. Ct. App. 1998) (citing *Van Cleave v. State*, 517 N.E.2d 356, 365 (Ind. 1987), *reh'g denied*; *Norris v. State*, 516 N.E.2d 1068, 1070 (Ind. 1987)). There are two principal questions that a trial court must consider in ruling on questions relating to discovery in a criminal trial: (1) is there a sufficient designation of the items sought to be discovered and (2) are the items sought material to the defense. *Id.*

at 1130-31 (citing *Jorgensen v. State*, 574 N.E.2d 915, 917 (Ind. 1991)). If the answers to both questions are affirmative, the trial court must grant the discovery motion unless the State makes a showing of paramount interest in nondisclosure. *Id.* at 1131.

Although Cochran identified the individuals he wished to depose,⁴ he has failed to show that the information he seeks is material to his defense. That is, Cochran desired to take the depositions in order to explore why the BMV requires a social security number in order to obtain a driver's license. However, as noted above, Cochran's religious objections to social security numbers are not a defense to the crime of operating a motor vehicle having never received a license; therefore, the BMV's requirements for a driver's license are simply not at issue in this criminal case. Accordingly, the trial court did not abuse its discretion in denying Cochran's requests to take the depositions at public expense. *See id.*

Affirmed.

ROBB, J., and BRADFORD, J., concur.

⁴ In April 2006, Cochran issued deposition subpoenas to Senator Johnny Nugent, Glenda Dennerline of the Lawrenceburg BMV, BMV Commissioner Joel Silverman, and Governor Mitch Daniels.